

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER PRESTFIELD,

Plaintiff,

v.

GEORGE M. ZAKHARY,

Defendant.

Case No. 1:20-cv-01551-NONE-EPG (PC)

ORDER DENYING MOTION TO WAIVE OR  
DELAY THE COLLECTION OF THE CASE  
FILING FEE

(ECF NO. 36)

Plaintiff Christopher Prestfield is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case proceeds on Plaintiff's claim that Defendant violated his 14th Amendment rights by failing to obtain his informed consent in operating on Plaintiff to repair a facial fracture because Defendant did not advise Plaintiff of the specific risk of severe post-operative neurological pain. (ECF No. 5).

On September 17, 2021, Plaintiff filed a "petition for possible resolution and dismissal of case." (ECF No. 36). For the reasons that follow, the Court will construe the filing as a motion to waive or delay the collection of the case filing fee. *See* Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion.").

Plaintiff's filing states that defense counsel has indicated a "willingness to resolve and dismiss this action" and "to waive all court costs on the Defendant's part in exchange for a dismissal with prejudice." (*Id.* at 1). Plaintiff's states that he "is willing to do that provided that

the Court will either waive the filing fee and court costs in the case, or at a minimum defer Plaintiff's obligation to pay filing fees or court costs for one year, till September 24th of 2022." (*Id.* at 1-2). Plaintiff fails to explain the reasoning behind this request, but generally indicates that his motivation stems from "a new book [that he authored] coming out in 2022." (*Id.* at 2). For the following reasons, the Court will deny the construed motion.

Because Plaintiff is proceeding *in forma pauperis*, the payment of the \$350.00 statutory filing fee is required by 28 U.S.C. § 1915(b)(1) and this Court's previous order permitting Plaintiff to proceed *in forma pauperis*. (ECF No. 4). The Court has no authority to waive or delay payment of the filing fee as part of the terms of Plaintiff's agreement to dismiss this action. *See In re Harris*, No. 96-CV-03827-DLJ (PR), 2017 WL 6883927, at \*1 (N.D. Cal. Nov. 17, 2017) ("Accordingly, Plaintiff's request to dismiss or forgive the filing fees in the above-reference actions is DENIED on the ground that the Court has no authority to waive the filing fees."). However, the Court notes that under § 1915(b)(2) and this Court's previous order permitting Plaintiff to proceed *in forma pauperis*, Plaintiff is required to pay the filing fee only in increments, specifically in an amount equal to twenty percent (20%) of the preceding month's income credited to the Plaintiff's trust account each time the amount in the account exceeds \$10.00 until a total of \$350.00 has been collected. (ECF No. 4).

For the foregoing reasons, IT IS ORDERED that Plaintiff's motion to waive or delay the collection of the case filing fee (ECF No. 36) is denied.<sup>1</sup>

IT IS SO ORDERED.

Dated: September 20, 2021

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Should the parties seek to voluntarily dismiss this case, they are referred to the requirements of Federal Rule of Civil Procedure 41(a).